

David W. Hittle, OSB No. 741427  
E-mail: [dhittle@dwhaal.com](mailto:dhittle@dwhaal.com)  
3040 Commercial Street SE, Suite 200  
Salem, OR 97302  
Telephone: (503)371-3844  
Attorney for Plaintiff

UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON  
EUGENE DIVISION

STAN SMITH, Civil Case No. 6:21-cv-1422  
Plaintiff,  
v. COMPLAINT  
(ERISA 29 U.S.C. §1001)  
PITNEY BOWES, INC. LONG  
TERM DISABILITY PLAN,  
Defendant.

Plaintiff alleges:

**INTRODUCTION**

1

This action is brought by plaintiff pursuant to the Employee Retirement Income Security Act of 1974, 29 U.S.C. §1001, et seq. ("ERISA"). Plaintiff seeks to recover long term disability ("LTD") benefits pursuant to the terms of a long term disability plan entitled Pitney Bowes Inc. Long Term Disability Plan (the "Plan"). Plaintiff also seeks

his costs and attorney fees pursuant to 29 U.S.C. §1132(e)(1) and (f), pre and post-judgment interest.

**JURISIDICIION AND VENUE**

2

Jurisdiction is conferred on this court by ERISA, 29 U.S.C. §1132(e)(1) and (f), which gives the District Courts jurisdiction to hear civil actions brought to recover benefits due under the terms of an employee welfare benefit plan.

3

Venue is proper in this District Court, pursuant to ERISA, 29 U.S.C. §1132(e)(2) and 28 U.S.C. §1381.

**THE PARTIES**

4

Plaintiff is an individual residing in the state of Oregon.

5

Pitney Bowes, Inc. is a corporation, doing business in Oregon.

6

On or about April 8, 1985 plaintiff became employed by Pitney Bowes, Inc., and after completing one month of employment, became insured under the Plan.

7

The Plan is an employee welfare benefit plan specifically covered under ERISA, 29 U.S.C. §1002(1) and 29 U.S.C. §1003(a).

8

The Welfare Plan Administrative Committee is the Plan Administrator of the Plan, within the meaning of ERISA, 29 U.S.C. §1002(15)(A).

9

LTD benefits paid out come from the Plan's Trust, which is funded in part by defendant and in part by employee contributions.

10

The monthly disability income paid under the Plan is set at 50% of the Plan participants monthly earnings, however, a participant may elect to "buy-up" to a 66 2/3% monthly disability income level. The participant pays a monthly contribution to the trust if the participant elects to buy-up to the higher monthly disability income level. The buy-up contribution ceases once monthly disability income commences.

11

On or about November 1993 plaintiff notified the defendant of his election to buy-up to the higher 66 2/3%

monthly disability income level.

12

On January 5, 1994, plaintiff became totally disabled as that term is defined in the Plan due to severe mental conditions.

13

The Plan requires a disabled participant to complete a Qualifying Period of 22 months of total disability during which monthly disability income is not paid. Plaintiff's Qualifying Period ended June 30, 1994.

14

On July 8, 1994 defendant notified plaintiff that he had been approved for monthly disability income starting July 1, 1994 in the amount of \$1,574.88 which was calculated at the 50% rate. The letter did not inform plaintiff that he had a right to appeal the monthly disability income calculation or that there was a 180 day time limitation within which to file an appeal.

15

Between July 1, 1994 and October 27, 2020, plaintiff had multiple telephone conversations with, and sent letters to, defendant asserting his entitlement to monthly disability income at the rate of 66 2/3% of rate rather

than the 50% he was being paid. Defendant did not respond to plaintiff's inquiries.

16

On September 12, 2007 defendant sent a letter to plaintiff informing him that it had discovered an error in his LTD monthly disability income payments dating back to June 6, 1994 because his monthly disability income was erroneously calculated to be \$1,574.88 rather than \$1,641.00. Both amounts were based on the 50% rate. The letter did not inform plaintiff that he had a right to appeal the 50% LTD monthly benefit calculation or that there was a 180 day time limitation within which to file such an appeal.

17

On November 13, 2007 plaintiff sent a letter to defendant asserting that his monthly disability income should be calculated at the 66 2/3%. He included a copy of his paycheck stubs showing a premium deduction for the 66 2/3% rate. Defendant did not respond to this letter.

18

On January 30, 2009 plaintiff sent a letter to defendant regarding their telephone conversation and several telephone messages he had left for defendant requesting defendant advise him about what was being done



about his monthly disability income being payable at the 66 2/3% rate. Defendant did not respond to this letter.

19

Defendant sent a letter to plaintiff on October 8, 2019 regarding a September 23, 2019 telephone conversation with plaintiff about plaintiff's claim for monthly disability income at the 66 2/3% rate. Defendant asserted that plaintiff did not qualify for the higher rate and if plaintiff wished to appeal the decision his written appeal must be received by defendant within 180 days following receipt of the letter. The letter did not mention the contractual limitation period or statute of limitations.

20

Plaintiff sent a letter to the defendant on March 24, 2020, appealing the October 8, 2019 denial of his claim for monthly disability income at the 66 2/3% rate.

21

On April 10, 2020 Defendant sent a letter to plaintiff acknowledging receipt of plaintiff's March 24, 2020 "timely appeal".

22

Defendant sent a letter to plaintiff on May 22, 2020 saying it could not address plaintiff's issue relating to

his 66/23% buy-up because it did not have access to paper files located in the office due to COVID-19.

23

On October 27, 2020 defendant sent a letter to plaintiff in response to his appeal saying that plaintiff's claim for monthly disability income at the 66 2/3% rate was being denied because the 180 day time for filing a formal appeal began running July 8, 1994 when he was approved for Plan benefits at the 50% rate. Defendant also asserted that the appeal was time barred because plaintiff failed to file an ERISA claim in federal court within the requisite time period (six years). The letter stated that this was the final administrative action to be taken regarding Plaintiff's appeal.

24

On April 16, 2021 plaintiff sent a letter to defendant appealing the October 27, 2020 decision denying his claim for monthly disability income at the 66 2/3% rate.

25

On June 17, 2021 defendant sent a letter to plaintiff again denying plaintiff's claim for monthly disability income at the 66 2/3% rate. The letter also stated that and any litigation filed as a result of a benefit denial must be filed in federal court within twelve months of the final

adverse benefit determination which it stated was within twelve months of October 27, 2020.

26

Between July 1, 1994 and October 27, 2020, defendant never provided plaintiff a clear and continuing repudiation of his claim such that he could have reasonably believed the Plan had finally denied his claim concerning the calculation of his monthly disability benefits.

27

Between July 1, 1994 and October 27, 2020, defendant never informed plaintiff of his appeal rights under ERISA or his right to bring a legal action.

28

Between July 1, 1994 and October 27, 2020, defendant never informed plaintiff of either the 12 month contractual limitation, the applicable statute of limitations, or their effect on his claim.

29

Plaintiff has exhausted all of his administrative levels of review.

30

Defendant made all of the decisions regarding plaintiff's LTD claim including the calculation of the



monthly disability income rate and was a paying source thus creating an structural conflict of interest.

31

The denial of plaintiff's claim for monthly disability income calculated at 66 2/3% of his monthly earnings is contrary to the record, unsupported by the terms and conditions of the Plan and is erroneous.

**CLAIM FOR RELIEF**

**Long Term Disability Benefits**

**(Violation of ERISA)**

32

Plaintiff realleges paragraphs 1 through 31 above.

33

Plaintiff has completed all administrative steps required pursuant to the Plan and under ERISA, including the administrative appeal of defendant's calculation of the monthly disability income rate pursuant to 29 U.S.C. §1133.

34

29 U.S.C. §1132(a)(1)(B) authorizes plaintiff to recover benefits due to him under the terms of the Plan, to enforce his rights under the terms of the Plan, and/or to clarify his rights in future benefits under the terms of the Plan.

35

Defendant has violated ERISA and continues to violate ERISA by miscalculating the rate of plaintiff's monthly disability income. 29 U.S.C. §1132(a)(1)(B).

36

Plaintiff has been damaged in the sum of \$546.44 per month, which is the difference between 50% of his monthly earning and 66 2/3% of his monthly earning, for the period from July 1, 1994 to October 1, 2021 for a total sum \$178,685.88 and continuing into the future until the monthly disability income is properly terminated under the terms of the Plan.

37

Plaintiff has incurred attorney fees and costs as a result of the miscalculation of plaintiff's monthly disability income which he is entitled to recover under the Plan pursuant to 29 U.S.C. §1132(g)(1).

38

Plaintiff has suffered damages in a definite and liquidated amount, and is entitled to pre-judgment and post-judgment interest on all amounts due and owing him from defendant.

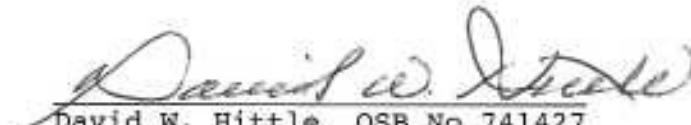
WHEREFORE, plaintiff prays that he have and recover judgment in his favor and against defendant as follows:

1) A sum equal to \$546.44 per month since July 1, 1994 through October 1, 2021 for a total sum of \$178,685.88 and continuing into the future until such time as his monthly disability benefits are properly terminated under the terms of the policy;

2) His attorney fees and costs, pursuant to 29 U.S.C. §1132(g)(1); and

3) Pre and post-judgment interest.

Respectfully submitted,

  
David W. Hittle, OSB No.741427